



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

**DECISION**

Case #: MAC - 203047

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**PRELIMINARY RECITALS**

Pursuant to a petition filed on August 31, 2021, under Wis. Stat. § 49.497(1m)(a), to review a decision by the Taylor County Department of Human Services regarding Medical Assistance (MA), a hearing was held on January 12, 2022, by telephone. Two previously scheduled hearings were rescheduled at petitioner's request.

The issue for determination is whether the agency correctly issued an Order to Compel Payment of Liability regarding an overpayment of BadgerCare Plus benefits (BCP) for benefits received between October, 2017 and June, 2018 in the amount of \$3,609.26 (claim number [REDACTED]).

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, WI 53703

By: [REDACTED]  
Taylor County Department of Human Services  
540 E. College Street  
Medford, WI 54451-2027

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Taylor County.

2. On November 6, 2019, the agency issued to petitioner an overpayment notice, informing him that he was not eligible for BCP he received from October 1, 2017 to June 30, 2018 in the amount of \$3,609.26, due to a failure to report household income exceeding program limits based upon client error. It informed him of his right to appeal by December 23, 2019.
3. On December 3, 2019, the agency issued to petitioner a repayment agreement again informing petitioner of the identified overpayment, and requesting that the debt be paid in full by December 23, 2019, or in the alternative that the repayment agreement be signed and returned by that date.
4. Dunning notices (reminders of the debt) were issued to petitioner on January 3, 2020, February 4, 2020, and March 3, 2020.
5. On April 3, 2021, the agency issued to petitioner an Order to Compel Payment of Liability ordering petitioner to pay the total amount due (\$3,609.26) pertaining to BCP overpayment claim no. [REDACTED].
6. On April 7, 2021, petitioner filed request for fair hearing to appeal the Order to Compel Payment of Liability.

### DISCUSSION

Wis. Stat., §49.497(1m)(a) provides that if, after notice of incorrect payment is made, a recipient who is liable for an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the State of Wisconsin may bring an action to enforce the liability or may issue an order to compel payment of the liability.

Petitioner did not file a timely appeal of the overpayment determination and at hearing did not establish any error by the respondent in notifying her of the overpayment. He conceded that he received the repayment agreement and that he did not return it or make payment at any time. He took the position that he did not appeal the underlying overpayment because he did not believe it was correct, and he was completely unfamiliar with the appeals process.

Despite maintaining regular contact with the consortium, there is no evidence in the record to establish any earlier attempt by petitioner to appeal the underlying overpayment. BCP recipients must appeal overpayment claims within 45 days of the date they were notified of the overpayment. Wis. Admin. Code § HA 3.05(3). If an appeal is filed late, the Division of Hearings and Appeals cannot consider it and must dismiss it. It is unrefuted that the department properly notified him of his obligation to appeal within 45 days and he didn't do so; as such, I cannot consider his appeal of the overpayment.

The only issues that can be addressed when appealing an order to compel payment of liability are whether petitioner paid off the overpayment or whether he has entered into a repayment agreement and complied with it. He has established neither. The BCP liability remains outstanding. The agency has established that it properly pursued and obtained an order to compel payment in an attempt to recoup the overpayment.

Petitioner also raised a claim that the debt is not affordable, as the household income has been severely impacted by the ongoing Covid-19 pandemic. The petitioner has in effect argued that the overpayment collection is unfair and that the administrative law judge should grant him relief from the program requirements. It is the long-standing policy of the Division of Hearings & Appeals, Public Assistance & Social Services Unit, that the Department's assigned administrative law judges do not possess equitable powers, and cannot base a ruling upon an idea of what is deemed fair. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions. Under law,

the agency has the right to pursue an order to compel payment when an established overpayment remains unpaid.

That being said, I note to petitioner that nothing in this decision prevents the petitioner from contacting the Public Assistance Collections Unit (PACU) at 1-800-943-9499, to inquire into potential repayment agreement options going forward.

### **CONCLUSIONS OF LAW**

1. The agency correctly issued an Order to Compel Payment of Liability for BCP overpayment claim no. [REDACTED].
2. Petitioner's appeal of the underlying overpayment is untimely, and as such, the Division of Hearings and Appeals lacks jurisdiction to address petitioner's appeal of the underlying overpayment.

**THEREFORE, it is**

**ORDERED**

That the petition for review is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5<sup>th</sup> Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

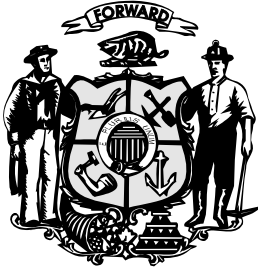
The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 14th day of January, 2022

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Peter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 14, 2022.

Taylor County Department of Human Services  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability